

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1654 of 2004

1.A.Govindaraj

2.Thenmozhi ...Appellants/Appellants/
Defendants 1 & 3

Vs.

1.Shanmugam

2.Arjunan ...Respondents 1 & 2/Respondents 1
& 2/Plaintiff 1 & 2

3.Muthuvel

4.Suvitha Ganesan ...Respondents 3 & 4/
Respondents 3 & 4/Defendants 2 & 4

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 22.10.2003, in A.S.No.94 of 2002 on the file of the Principal District Judge, Vizhupuram District at Vizhupuram confirming the judgment and decree dated 17.11.2000 in O.S.No.46 of 1994 on the file of the Principal District Munsif, Thirukkivilur.

For Appellants : Mr.S.Krishnasamy

For Respondents

For R1 : Mr.V.Raghavachari
: R2 & R4 - Notice served
: R3 - died

JUDGMENT

The second appeal is directed as against the judgment and decree dated 22.10.2003, in A.S.No.94 of 2002 on the file of the Principal District Judge, Vizhupuram District at Vizhupuram confirming the judgment and decree dated 17.11.2000 in O.S.No.46 of 1994 on the file of the Principal District Munsiff, Thirukkivilur.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiffs in brief is as follows:-

3.1 The plaintiffs filed the suit for declaration and injunction. The suit property along with other properties admeasuring 32 cents originally belong to grant mother of the defendants 1 and 2, namely Gangaiammal. Already, the entire extent of 32 cents of property was declared in favour of the said Gangaimmal by the District Munsif Court, Thirukkivilur in O.S.No.356 of 1966. Thereafter she settled the said property by the settlement deed dated 09.06.1974 in favour of one, Muniammal, the wife of her grand son, namely Subramania Gounder. Thereafter the entire revenue records were mutated in her name in respect of the suit property and she was in possession and enjoyment of the same.

3.2 The first item of the suit schedule property, by the registered sale deed dated 07.12.1986, was sold out to the first plaintiff to an extent of 11 cents. In respect of the second item of the suit schedule property, the second plaintiff purchased the same from the said Muniammal by the sale deed dated 07.12.1986. In respect of the third item of the suit schedule property, the second plaintiff purchased the same by the registered sale deed dated 14.06.1993. Accordingly, both the plaintiffs are in possession and enjoyment of the suit property and all the revenue records were mutated in their names. The remaining property admeasuring five cents was purchased by one, Backiam Ammal from the said Muniammal and she is in possession and enjoyment of the suit property. While being so, without any right or title over the property, the defendants tried to trespass into the property and create hindrance over the suit schedule property. The third defendant is the daughter of the first defendant and her brother is the second defendant. The fourth defendant is the husband of the third defendant. Therefore, the plaintiffs filed suit for declaration and injunction as against the defendants.

4. Resisting the same, the defendants 1 and 3 alone filed written statement stating that in Survey No.50/11 admeasuring 32 cents originally belonged to one, Gangaimmal. The said Gangaimmal died leaving behind her daughter Pachaiaammal without executing any document in favour of the vendor of the plaintiffs. In fact, the said property is not a self acquired property by the said Gangaiammal. It is an ancestral property, which was derived by the said Gangaiammal by settlement deed dated 09.06.1974 is false and created one. Till the death of the said Gangaimmal, she was in possession and enjoyment of the suit property. In fact, patta was also issued in her name, and it was in the name of Gangaiammal till 1985. Though the said Gangaiammal had two daughters, pachaiaammal and

one, Govindhammal, the said Govindhammal relinquished her right in favour of the said Pachaiaammal after the demise of their mother Gangaiaammal. After relinquishment of the right by the said Govindhammal, Pachaiaammal alone was in possession and enjoyment of the property. Thereafter all the defendants jointly enjoyed the said property. The first defendant has 1/5 share in the suit schedule property and likewise, the plaintiffs are also entitled to have 1/5 share in the suit schedule property. Accordingly, the share of the first defendant was sold out in favour of the third defendant on 10.12.1986.

4.1 Therefore, the sale deed executed in favour of the plaintiffs is null and void. Further the entire extent of 32 cents was never partitioned and in the suit schedule property, item Nos.1 to 3 are not separate property. Further pleaded that the other shareholders of the suit schedule property, namely Arumugam, Backiyammal are not impleaded as party as such the suit itself is not maintainable for non joinder of necessary parties. Therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and twelve documents were marked as Ex.A.1 to Ex.A.12. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.4 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiffs. Aggrieved over the judgment and decree of the trial Court, the defendants 1 and 3 alone preferred appeal suit in AS.No.94 of 2002 before the Principal District Court, Vizhupuram District at Vizhupuram. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by the same, the defendants 1 and 3 have filed this second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed:-

a) Whether the courts below are correct in accepting Ex.A1, settlement deed, without examining anyone of the attesting witnesses, which is the mandatory requirement as contemplated under Sections 68 and 69 of the Indian Evidence Act, as the defendants have denied the execution and genuinity of Ex.A.1?

b) Whether Muniammal became the owner of the suit properties under Ex.A1 settlement deed, without establishing her immediate possession of the suit properties under Ex.A.1?

7. The learned counsel appearing for the plaintiffs and the defendants are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard, the learned counsel appearing for the plaintiffs and the learned counsel appearing for the defendants.

9. This Court considered the rival submissions made by the learned counsel on either side.

10. Admittedly, one, Gangaammal was the original owner of the property comprised in Survey No.50/11 admeasuring 32 cents more described in suit schedule property. She settled the said property by the registered settlement deed dated 09.06.1974 in favour of her grandson's wife, namely Muniammal. Thereafter, the revenue records were also mutated in her name. On 07.12.1986, she sold out the first and second items of the suit schedule property in favour of the first and second plaintiffs by the registered sale deed admeasuring 11 cents each. Insofar as the third item of the suit schedule property admeasuring 5 cents was also sold out by the said Muniammal in favour of the second plaintiff by the registered sale deed dated 14.06.1993. The settlement deed was marked as Ex.A1. The said property was already declared by the District Munsif Court, Thirukkivilur in O.S.No.356 of 1966 in favour of the said Gangaammal. Therefore, it is clear that the said property is self acquired one by the said Gangaammal.

10.1 The sale deed executed by the said Muniammal in favour of the first and second plaintiffs were marked as Ex.A.3 and Ex.A.4. The sale deed dated 14.06.1993 executed by the said Muniammal in favour of the second plaintiff was marked as Ex.A5. Thereafter, the Revenue Divisional Officer, Thirukkivilur transferred the patta in the name of the plaintiffs by order dated 31.08.1989, which was marked as Ex.A.6. The defendants 1 and 2 and one, Arumugam are brothers. Though D.W.1 deposed that while the said Gangaammal was alive, she executed partition deed in favour of them, for which no document was produced by the defendants. In fact, they did not even state in their written statement. Further, the defendants took a specific stand that the settlement deed is a created one, but they did not prove the same by means of oral or documentary evidence.

10.2 When it being so, the Ex.A.1 is a registered one, and the plaintiffs did not examine any of the witnesses to the said settlement deed. After settlement deed, the said Muniammal sold out the suit schedule property in the year

1986 and all the revenue records were mutated in the name of the plaintiffs. In fact, immediately after the settlement deed, the patta and other revenue documents were mutated in the name of the said Muniammal. Even then, the defendants failed to challenge the settlement deed and mutation of revenue records in favour of the said Muniammal. Therefore, the plaintiffs proved their title and interest over the suit schedule property through Ex.A.1 and Ex.A.2.

11 Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons and concluded rightly. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in the Second Appeal, are accordingly answered against the defendants and in favour of the plaintiffs.

12. In fine, the Second Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Vizhupuram District at Vizhupuram

2. The Principal District Munsiff,
Thirukkivilur.

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+lcc to Mr.S.Krishnasamy, Advocate, S.R.No.1049

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.353

S.A.No.1654 of 2004

RSK(CO)

CB(26/08/2020)

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